

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 26 February 2016**

Case Number: T 1588/12 - 3.5.05

Application Number: 04755704.6

Publication Number: 1639748

IPC: H04L12/24

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR DYNAMICALLY CONFIGURING AND
TRANSITIONING WIRED AND WIRELESS NETWORKS

Applicant:

Intel Corporation

Headword:

Automatic network configuration/INTEL

Relevant legal provisions:

EPC Art. 123(2)
EPC 1973 Art. 84

Keyword:

Amendments - extension beyond the content of the application
as filed (yes)
Claims - clarity after amendment (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1588/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 26 February 2016

Appellant: Intel Corporation
(Applicant) 2200 Mission College Boulevard
Santa Clara, CA 95054 (US)

Representative: Beresford, Keith Denis Lewis
Beresford Crump LLP
16 High Holborn
London WC1V 6BX (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 10 February
2012 refusing European patent application No.
04755704.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
G. Weiss

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted on 10 February 2012, to refuse European patent application No. 04755704.6. The decision was a decision according to the state of the file and referred to communications of the examining division containing substantiated objections under Article 84 EPC 1973, Article 123(2) EPC, and under Article 54 EPC 1973 having regard to the disclosure of D2: US 6 349 306.
- II. Notice of appeal was received on 18 April 2012 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 20 June 2012. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims 1 to 15 filed with the statement setting out the grounds of appeal. In addition, oral proceedings were requested as an auxiliary measure.
- III. A summons to oral proceedings was issued on 3 December 2015. In an annex to this summons, the board gave its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. The board raised objections under Article 123(2) EPC and Article 84 EPC 1973 against independent claims 1 and 15. The board further indicated that, should it decide at the oral proceedings that the claims meet the requirements of Article 84 EPC 1973 and Article 123(2) EPC, it would remit the case to the department of first instance for further prosecution of the application.

- IV. By letter dated 26 January 2016, the appellant informed the board that it would not be attending the oral proceedings on 26 February 2016.
- V. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 15 filed with the statement setting out the grounds of appeal.
- VI. Oral proceedings were held on 26 February 2016 in the absence of the appellant. After due deliberation on the basis of the written submissions in the statement setting out the grounds of appeal, the board announced its decision.
- VII. Claim 1 of the sole request reads as follows:

"A method of automatically changing a network interface of a node of a network such that the node undergoes a transition from having a first network interface to having a second network interface, said network comprising a plurality of network components having respective resources, the method comprising:
receiving (810) a human-readable description of the transition, the human-readable description having a standardized syntax;
referencing a list of the network components to identify the resources that are available within the network, said list comprising a network resource and association file describing available network resources and associations in a standard syntax,
creating a virtual map of the network in volatile memory based on the referenced list of network components;
comparing the human-readable description of the transition with the virtual map of the existing network

and selecting appropriate resources [sic] to support the transition;
selecting (820) a network component from the list of network components based on resources of the components required to effect the transition; and
configuring (830) the selected network component based on a resource of the selected component and the description of the transition, wherein the selected network component has an associated network resource wrapper to provide a machine accessible and standardized description of the resources of the selected network component, wherein configuring the selected network component includes calling a function to alter the associated network resource wrapper."

The request comprises a further independent claim for a corresponding network (claim 15).

Reasons for the Decision

1. The appeal is admissible.
2. Non-attendance at oral proceedings

In its letter of 26 January 2016 the appellant announced that it would not be attending the oral proceedings. The board considered it expedient to maintain the date set for oral proceedings. Nobody attended the hearing on behalf of the appellant.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written

case.

Thus, the board was in a position to take a decision at the end of the hearing.

3. Article 123(2) EPC

3.1 The feature present in claim 1 of "changing a network interface of a node of a network such that the node undergoes a transition from having a first network interface to having a second network interface" does not have any support in the application documents as originally filed. The passages cited by the appellant (paragraphs [00012] and [00035]) merely describe the transitioning of a node from a first network interface to a second network interface. They do not describe that the node has a first network interface and a further second network interface. From these passages, the skilled person may well understand that the node is first connected to a network interface without having this network interface, and then by undergoing the transition, is connected to a second network interface without having it.

3.2 The feature present in claim 1 that "configuring the selected network component includes calling a function to alter the associated network resource wrapper" does also not have any support in the originally filed application documents. The description mentions in paragraph [00015] that network resource wrappers may be used to configure and transition networks. Further, paragraph [00017], also referring to network transitions, describes that in an embodiment of the invention, network resource wrappers are used to configure network components. The next paragraph [00018] relates to a particular example of a network

resource wrapper function call used for configuring a VLAN switch and mentions that each network component may be configured with a network resource wrapper function call. The transition of a single node, however, is described only in paragraphs [00035] to [00039], with reference to Figure 8. These paragraphs do not mention at all the use of a network resource wrapper function call for transitioning the node.

The appellant relied for its argumentation on paragraph [00018], describing that a network resource wrapper function call may be used to configure a VLAN switch, and on the last sentence of paragraph [00045], which states that the type of interaction used to alter the state of a network component depends on the particular network component. Based on these passages, the appellant argued that the embodiment of Figure 8, i.e. the transition of a node, necessarily uses a network resource wrapper for configuring a component. The board is however not convinced by this argument since the configuring of a component may be performed without using a network resource wrapper, as emphasised by the use of the term "may" in the wordings "may use network resource wrappers", in paragraphs [00015] and [00024], and "may be configured with similar network resource wrapper" in paragraph [00018]. Moreover, the description is silent about "alter[ing] the associated network resource wrapper".

For these reasons, the board judges that claim 1 contains subject-matter which extends beyond the content of the application as originally filed, contrary to the requirements of Article 123(2) EPC.

4. Article 84 EPC 1973

In the board's judgement, the following features of claim 1 are not clear *per se* or in the light of the whole description.

"Creating a virtual map of the network in volatile memory based on the referenced list of network components" does not clearly define how the network components referenced in the list are connected together to build a map of the network.

"Selecting appropriate resources to support the transition" and "selecting a network component...to effect the transition" do not clearly define how the resources and the component are selected such that the node interface is changed.

Therefore claim 1 does not meet the requirements of Article 84 EPC 1973.

5. The sole request is thus not allowable under Article 84 EPC 1973 and Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



P. Martorana

A. Ritzka

Decision electronically authenticated